

CALIFORNIA COASTAL COMMISSION

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December 20, 2002

TO: CALIFORNIA COASTAL COMMISSIONERS
FROM: PETER M. DOUGLAS, EXECUTIVE DIRECTOR

Th.6a

SUBJECT: STAFF RECOMMENDATION ON MAP OF POST-LCP CERTIFICATION
JURISDICTION, CITY OF ENCINITAS
(for Commission consideration at its January 7-10, 2003 meeting)

This recommendation was developed by Jonathan Van Coops and Darryl Rance, Coastal Program Analysts, Mapping/GIS Unit, working under the direction of Susan Hansch, Chief Deputy Director and Manager - Technical Services Division.

SUBSTANTIVE FILE DOCUMENTS

- San Elijo Lagoon Boundary Study, California State Lands Commission, February 1976.
- National Wetland Inventory Maps, U.S. Department of the Interior, Fish & Wildlife Service, Encinitas and Rancho Santa Fe Quadrangles, 1990.
- Sheet 6, NOAA/ USCOE Cooperative Shoreline Movement Study, Imperial Beach – San Pedro, CA, 1985.
- Potential Public Trust Land Maps No. 155 & No. 156 (Encinitas and Rancho Santa Fe Quadrangles), California State Lands Commission, 1979-80.
- Coastal Commission 1: 12,000-scale Vertical Aerial Photography 1970-2001.
- Review of San Elijo Lagoon Tidal Study: Eastern Limit of Tidal Action in San Elijo Lagoon by Tierra Environmental Services, Inc., John Dixon, Ph.D., California Coastal Commission, April 20, 1999.
- San Elijo Lagoon Tidal Study: Eastern Extent of Tidal Action in San Elijo Lagoon, Tierra Environmental Services, Inc., Chris Nordby, Principal Author, March 1999.
- Letter from Tom Curriden, Senior Planner, City of Encinitas to Jonathan Van Coops, California Coastal Commission, January 11, 2002.
- Letter from Michael T. Larsen, Attorney for M&M Development, LLC to Sara Wan, Chair, California Coastal Commission, and California Coastal Commissioners, July 9, 2002. (Note: document submitted at July 9, 2002 Coastal Commission hearing)
- Letter from Chris Nordby, Tierra Environmental Services, Inc. to Sara Wan, Chair, California Coastal Commission, and California Coastal Commissioners, February 7, 2002. (Note: document submitted at July 9, 2002 Coastal Commission hearing)
- Letter from Mark J. Dillon, Attorney for Encinitas Country Day School, Inc., dba Encinitas Country Day School, Kathleen Porterfield, and M&M Development, LLC to

Sara Wan, Chair, California Coastal Commission, and California Coastal Commissioners, July 9, 2002. (Note: document submitted at July 9, 2002 Coastal Commission hearing)

- Letter from Martin J. Mullen, Attorney for Encinitas Country Day School, Kathleen Porterfield, and M&M Development, LLC to Sara Wan, Chair, California Coastal Commission, and California Coastal Commissioners, July 9, 2002. (Note: document submitted at July 9, 2002 Coastal Commission hearing)
- Letter from Chris Nordby and Arthur Wolfson, Tierra environmental Services, to Sara Wan, Chair, California Coastal Commission, and California Coastal Commissioners, July 9, 2002. (Note: document submitted at July 9, 2002 Coastal Commission hearing)
- Memorandum on Tidal Action within San Elijo Lagoon, East of Interstate 5, Lesley Ewing, P.E., Sr. Coastal Engineer, California Coastal Commission, December 16, 2002.
- San Elijo Lagoon Conservancy, Technical Assessment, Tidal Action Monitoring and Experiment at San Elijo Lagoon, Encinitas, CA, October 12, 2002.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the map prepared by staff showing the areas where the Commission retains permit authority pursuant to Public Resources Code Section 30519(b) and Section 30613, and where appeals of local government coastal development permit approvals are allowed pursuant to P.R.C. Section 30603(a)(1) and (2) within the City of Encinitas.

MOTION

Staff recommends that the Commission adopt the following motion:

I move that, for the reasons stated in the staff report and recommendation dated December 20, 2002, the Commission approve the Post-LCP Certification Map prepared by staff for the City of Encinitas.

STAFF NOTE

The Commission has not yet adopted Post-LCP Certification maps for four jurisdictions with certified LCPs: Encinitas, Half Moon Bay, Palos Verdes Estates, and the City of San Diego. The staff is currently working to finalize the draft maps for these jurisdictions and bring them to the Commission for adoption at a series of Commission meetings during the next year.

A public hearing on this item was held during the July 2002 meeting of the Commission. At that time, persons who oppose the staff recommendation submitted several volumes of written materials. In order to have adequate time to evaluate the newly submitted comments, the

Commission continued action on the item. Section IV of this report contains responses to the comments submitted at the July 2002 hearing.

BACKGROUND

I. Post-LCP Certification Permit and Appeal Jurisdiction

After an LCP certification becomes effective, coastal development permit authority within that jurisdiction is largely delegated to the local government. However, pursuant to Section 30519(b) of the Coastal Act, the Commission retains permit authority (with certain exceptions) after LCP certification over developments occurring on tidelands, submerged lands, and public trust lands. As provided in Section 30613 of the Coastal Act, local jurisdictions may request that primary permit authority in areas subject to the public trust that are filled, developed, and committed to urban uses be transferred to the local government's jurisdiction. The City of Encinitas, for which effective LCP Certification occurred in May of 1995, has not made a Section 30613 request as of this date. General location maps depicting the City of Encinitas are included as Exhibits 1 and 2.

In addition to the retained permit jurisdiction, Section 30603 of the Coastal Act defines certain areas and types of development for which approvals by the local government may be appealed to the Commission. Appeal jurisdiction is retained, for example, over development that is within 100 feet of streams or wetlands, on lands subject to the public trust, within 300 feet of the top of the seaward face of coastal bluffs, and between the sea and the First Public Road paralleling the sea or within 300 feet of the inland extent of the beach or the mean high tide line, whichever is the greater inland distance. The Commission's regulations provide specific boundary determination criteria for mapping the Commission's permit and appeal jurisdiction. (See 14 C.C.R. §13577 Exhibit 10).

II. Post-LCP Certification Map Adoption

For each coastal zone City or County with an effectively certified local coastal program, the Commission adopts a map or maps depicting the geographic areas where the Commission retains permit authority and where it has appeal jurisdiction (See 14 C.C.R. §13576(a)). This "post-LCP certification map" is intended to assist local governments, applicants, and other interested persons determine jurisdictional boundaries, but it remains a representation of these permit and appeal jurisdiction areas, and does not supercede Sections 30519(b) and 30603(a) of the Coastal Act, which define the Commission's retained original permit and appellate jurisdiction. In any location where there is a question about the mapped boundary, or where by virtue of cartographic generalization, map scale, changed conditions, compilation error, or any other reason, the map does not accurately depict conditions on the ground, the Commission's original and appellate jurisdiction is determined by applying the requirements of the Coastal Act and Commission regulations to the physical geographic conditions of a coastal area.

The Commission's regulations acknowledge that jurisdiction is ultimately determined by reference to the applicable statutory criteria by requiring post-LCP Certification maps to include a note stating that the map "may not include all lands where permit and appeal jurisdiction is retained by the Commission." The regulations also provide that the "maps may be updated from time to time when there are changed circumstances or where additional information becomes available indicating that the mapped boundaries do not reflect the jurisdictional criteria established in the Coastal Act and the Commission's regulations." (See 14 C.C.R. §13576(a)).

The full text of the map note referenced above is as follows:

"This map has been prepared to show where the California Coastal Commission retains permit and appeal jurisdiction pursuant to Public Resources Code Sections 30519(b), 30603(a)(1) and (a)(2) and 30600.5(d). In addition, development may also be appealable pursuant to Public Resources Code Section 30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plat may be updated where appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission."

III. Previous Encinitas Draft Post-LCP Certification Maps

During the early 1980's, the Commission's Technical Services Division began preparing draft Post-LCP Certification Permit and Appeal Jurisdiction maps for all local governments within or partly within the Coastal Zone. The first effort consisted of producing a set of 161 draft maps using the USGS 7.5 minute quadrangle base (scale 1:24,000 or 1 inch equals 2000 feet), and was completed in 1981. The primary purpose of this project was to provide draft permit and appeal boundaries for review by the local government staff, Commission staff, and other interested parties. It was fully anticipated that these maps would be reviewed and revised or refined in response to comments from other Commission staff, local governments, and interested members of the public, as indicated by the map notes, and general correspondence sent out with maps for review. The area now within Encinitas, which in 1981 had not yet been incorporated, was covered by map sheets 155 and 156, the Encinitas and Rancho Santa Fe quadrangles. Copies of this regional quad-scale draft map were distributed for review to the regional commission offices and local governments in April 1981. The boundaries and map notes shown on this map were replicated on a large-scale base map in 1988, and distributed to the City and the Commission's San Diego District office staff for review.

In preparing the draft quad-scale map distributed in 1981, the First Public Road Paralleling the Sea in the area around San Elijo lagoon was mapped using what is now known as 14 C.C.R. Section 13577(i)(2) as the operative section controlling what was delineated as geographically appealable. Based on a review of maps and documents available at the time, Commission staff reached two conclusions: (1) that San Elijo Lagoon was the "Sea" for purposes of the Coastal Act, and (2) that there appeared to be no public road, or combination of public roads in the area that encompassed the lagoon consistent with the criteria of 14 C.C.R. Section 13577 (i)(1)(E).

The staff now knows this is not the case, and that there is, in fact, a series of connected, continuous public roads that form an access system encompassing the lagoon. The First Public Road paralleling the Sea described further on in this report, and recommended for adoption is made up of that system of roads. In prior actions, the Commission has treated this system of roads, including Manchester Avenue, as the First Public Road Paralleling the Sea. See, e.g., CDP 6-83-314 (Manchester Estates), A-6-ENC-96-34 (Fletcher), A-6-ENC-97-070 (Kirkorowicz), A-6-ENC-98-109 (Fletcher), A-6-98-158 (Encinitas Country Day School).

Due to the interpretation in 1981 that no system of roads encompassed San Elijo Lagoon consistent with 14 C.C.R. Section 13577(i)(1)(E), and the fact Highway 101 met all the criteria in Section 13577(i)(1), except (i)(1)(E), the staff applied 14 C.C.R. Section 13577(i)(2). As a result, the mapped geographic appeal area included lands between the sea and Highway 101, and lands inland of the highway consisting of parcels fronting on the lagoon or 300 feet from the mean high tide line of the lagoon, whichever is the greater distance. A map note was included to indicate that the draft geographic appeal jurisdiction along San Elijo Lagoon inland of Highway 101 was the first row of parcels or 300 feet from the mean high tide line, whichever was the greater distance. This is the appeal jurisdiction that is provided for when there is no public road that meets all the criteria in 14 C.C.R. Section 13577(i)(1). As mentioned above, the boundaries and map notes shown on the 1981 draft map were replicated on a draft large-scale parcel base map in 1988, and distributed to the City and the Commission's San Diego District office staff for review at that time.

The City sent a letter concurring with the 1988 draft large-scale post-LCP Certification map in January of 1989, but presented several questions that were answered by staff in an April 1989 letter. No further activity regarding the City's drafts post-LCP Certification map occurred until 1994, when the LCP was approved. A 1995 draft map was updated and a staff recommendation prepared for adoption in June of that year. The City again concurred with the draft map, but requested postponement when it was determined that an 850 acre annexation was not depicted on the draft map. No public hearing was ever held concerning the initial draft maps which depicted Highway 101 as the First Public Road. Thus, interested members of the public did not have an opportunity to provide testimony as to whether Highway 101 was the appropriate road to designate as the First Public Road. An updated version of the large-scale draft post-LCP Certification map including the 850-acre annexation was prepared in 1999. This version is the first draft map that correctly depicts the First Public Road around San Elijo Lagoon and encompasses the "Sea" as defined in Section 30115 of the Coastal Act.

As of the date of this report, the Commission has not taken any action regarding adoption of a Post-LCP Certification Map for the City of Encinitas.

STAFF ANALYSIS

The depiction of certain segments of the First Public Road paralleling the Sea (FPR) on the Encinitas draft post-LCP Certification map is the only area of controversy regarding this map

adoption. While the City is in concurrence with the staff recommendation, recent litigation has raised the issue of the differences in the location of the mapped First Public Road and extent of appeal jurisdiction adjacent to San Elijo Lagoon depicted on the previous and current draft maps. The staff's position and supporting information regarding the First Public Road and appeal jurisdiction is presented below under the headings: Ia. San Elijo Lagoon as the Sea, and Iib. First Public Road at San Elijo Lagoon. The actual route of the designated First Public Road paralleling the Sea is described in the section entitled: III. First Public Road Description. Section IV. of this report contains responses to the comments submitted at the July 2002 hearing.

I. Permit Jurisdiction

The Commission's continuing permit jurisdiction in the City of Encinitas is delineated so as to include lands lying below Mean High Tide Line (MHTL), and within public trust lands located at Batiquitos and San Elijo Lagoons. The sources for the permit boundary as depicted on the post LCP Certification map are maps number 155 and number 156 from the 1:24,000 scale set showing potential public trust lands prepared for the Coastal Commission by the State Lands Commission staff. These maps were initially used to map permit jurisdiction wherever the public trust component is the controlling boundary criterion, however, given the complexity involved in precisely mapping potential public trust boundaries, the delineation may not include all areas subject to the trust. Questions regarding the exact location and extent of public trust lands are referred to the State Lands Commission for determination.

II. Appeal Jurisdiction

The Coastal Zone extends inland approximately three miles in this part of northern San Diego County, and the Commission's appeal jurisdiction areas in the City of Encinitas are generally found along the immediate shoreline and adjacent to lagoons, wetlands, and intermittent streams. A significant portion of the City lies within an appeal area determined by reference to the location of the First Public Road paralleling the Sea (See Exhibit 3).

As with all other 15 coastal counties and 59 coastal cities, the appeal jurisdiction boundary in Encinitas is mapped according to the geographic criteria specified in Section 30603(a) of the Coastal Act, and further defined in the Commission's regulations at 14 C.C.R. §13577. Along the shoreline of the ocean, the appeal jurisdiction boundary generally follows the First Public Road, except where the road is situated closer than 300 feet inland from the bluff top. In these locations the boundary is 300 feet from the top of the seaward face of the bluff. Farther inland, appeal areas are found along coastal streams and wetlands, where the boundaries include lands within 100 feet of the stream banks. Adjacent to the north side of San Elijo lagoon, where the First Public Road Paralleling the Sea (Manchester Ave.) is situated close to the edge of the lagoon, the appeal jurisdiction includes the area within 300 feet from the MHTL, which is the greater inland distance. East of Interstate 5, where the First Public Road paralleling the Sea is more than 300 feet from the MHTL, and again the controlling boundary criterion, Manchester Ave., Rancho Santa Fe Rd., La Bajada, and La Noria form the boundary of the appeal jurisdiction (See P.R.C. §30603(a)(1), 14 C.C.R. §13577(i)).

Ila. San Elijo Lagoon as the “Sea”

The language of 14 C.C.R. Section 13577(i)(1) was intended to ensure that the designated “First Public Road Paralleling the Sea” (FPR) extend inland around water bodies that are considered the Sea as defined by P.R.C. Section 30115. Section 30115 defines the “Sea” to include “estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean.” Based on the staff’s analysis of available information, San Elijo Lagoon clearly meets the criteria in P.R.C. Section 30115 and is the “Sea” for purposes of the Coastal Act.

14 C.C.R. Section 13577 defines “estuary” as “a coastal water body, usually semi-enclosed by land, having open, partially obstructed, or intermittent exchange with the open ocean, and in which ocean water is at least occasionally diluted by freshwater from the land.” As far back as 1972 and the earliest days of the Coastal Zone Conservation Commission (as it was called during the “Prop 20” era), the staff has always considered San Elijo Lagoon as the “Sea”, and strong evidence supports that conclusion. Aerial Photography taken over a period of years often shows an open connection to the Pacific Ocean. In 1976 the State Lands Commission published a report entitled San Elijo Lagoon Boundary Study that provided detailed information about tidal action in San Elijo Lagoon, and states that the lagoon has historically been open to the waters of the Pacific Ocean on a seasonal basis. Field observations performed as part of the study indicated that the waters within the lagoon rise and fall in harmony with the tides on the ocean, whether or not the mouth is open. The study further concluded that the natural bed of the lagoon continued to be subject to tidal action. A map showing the historic natural bed and areas subject to tidal action in San Elijo Lagoon prepared by the State Lands Commission is attached as Exhibit 4.

At the federal level, the US Army Corps of Engineers (USCOE), The US Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration (NOAA) have each produced maps depicting the San Elijo Lagoon as subject to tidal action. The Corps produced a map from field surveys depicting detailed topography and mean higher high water levels well inland of Interstate 5. USFWS has produced the National Wetland Inventory maps that classify significant portions of the lagoon as estuarine subtidal and intertidal wetlands, and NOAA has produced detailed topographic maps of the lagoon as well. The States Lands Commission considers a 1934 map prepared by NOAA (Topographic Survey Map T-5411) as the best depiction of the general configuration of the historic natural bed and areas subject to tidal action in San Elijo Lagoon (See Exhibits 4, 5, and 6).

More recent materials received during the course of litigation referred to earlier also support the position that the lagoon is subject to tidal action. The Commission’s staff biologist has reviewed the 1999 Nordby report prepared for Tierra Environmental Systems, Inc. and other available materials and concurs with mapping staff that San Elijo Lagoon is subject to tidal action, meets the criteria in P.R.C. Section 30115, and is the “Sea” for purposes of the Coastal Act (See Exhibit 8). The Commission’s coastal engineer has reviewed the materials submitted to the

Commission at its July 2002 hearing and more recent monitoring reports regarding the lagoon and similarly concluded that San Elijo Lagoon is subject to tidal action that extends beyond the Interstate 5 bridge. (See Exhibit 9). San Elijo Lagoon is therefore an estuary and part of the sea as defined by Coastal Act Section 30115.

Iib. First Public Road at San Elijo Lagoon

14 C.C.R. Section 13577(i)(1)(E),¹ provides that in order for a road to be designated as the First Public Road Paralleling the Sea, it must be a road that “does in fact connect with other public roads providing a continuous public access system, and generally parallels and follows the shoreline of the Sea so as to include all portions of the Sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the Sea to extend landward of the generally continuous coastline.”

As elsewhere in the Coastal Zone, in the City of Encinitas coastal geography controls whether 14 C.C.R. Subsections 13577(i)(1), (i)(2) or (i)(3) become operative. As long as there is public road that satisfies the requirements of 14 C.C.R. § 13577(i)(1)(E), following the shoreline of the outer coast, or the shoreline of a water body defined as the Sea for purposes of the Coastal Act, the task of designating the First Public Road is simple. That road is the “First Public Road paralleling the Sea,” and pursuant to 14 C.C.R. Section 13577(i)(1), the appeal boundary follows the inland, or landward right of way. Along the northern side of San Elijo lagoon, Manchester Avenue, Rancho Santa Fe Rd., La Bajada, and La Noria, form the set of roads that meet the requirements of this section.

14 C.C.R. § 13577(i)(2) provides for the appeal jurisdiction in the event that there is no public road that meets all of the criteria in 14 C.C.R. Section 13577(i)(1). 14 C.C.R. § 13577(i)(3) allows the Commission to determine that certain areas are not within the Commission’s appeal jurisdiction even though they are located seaward of the First Public Road if development in those areas would not raise issues that are appealable pursuant to Coastal Act section 30603(a). Given that the lagoon inland of Highway 101 has significant habitat value, it would be inappropriate to restrict the Commission’s appellate jurisdiction to the area depicted on the initial draft map.

Designating the First Public Road Paralleling the Sea adjacent to inland water bodies subject to tidal action and defined as the Sea for purposes of the Coastal Act involves answering two questions: (1) How far inland does tidal action extend?, and (2) Is there a road or set of roads that meets the requirements of the regulations?

In Encinitas, the earliest draft mapping by Commission staff reflected the fact that San Elijo Lagoon is the Sea for purposes of the Coastal Act, however, the misinterpretation about the presence of a continuous, connected road system encompassing the lagoon allowed the draft map compilation to avoid the question of inland extent of tidal action. In applying 14 C.C.R.

¹ The full text of the regulatory definition of the First Public Road Paralleling the Sea is attached as Exhibit 10.

Section 13577(i)(2) the mapped boundary was simply drawn along the old Coast Highway, and a series of map notes added to the area inland of the Highway, stating that in those areas the appeal jurisdiction includes the first row of parcels or lands within 300 feet from the Mean High Tide Line, whichever is the greater distance.

After a series of questions related to Boundary Determinations in late 1998, it became clear that the draft map did not reflect conditions on the ground, or the First Public Road Paralleling the Sea in use at the district level. Once the draft map error was identified and a map revision process begun, the question of extent of tidal action again became central. Returning to the earlier source material from the State Lands Commission, USFWS, and NOAA, staff determined that tidal action extends inland of the Interstate 5 highway bridge and some distance inland. The State Lands Commission and NOAA information indicate San Elijo Lagoon is subject to tidal action approximately 700 – 1000 feet east of Interstate 5. The USFWS National Wetlands Inventory map includes an even larger area east of Interstate 5 within its “E2” or Estuarine Intertidal Wetland category. The USCOE map also shows an area of tidal action extending east of Interstate 5.

Evidence submitted by the public also supports the position that tidal action extends inland of Interstate 5. An oceanographer (Dr. H.S. Elwany) with Scripps’s Institute of Oceanography points out that the traditional inland extent of tidal action was considered to be a dike or weir structure located 700 to 1700 feet east of Interstate 5. The Tierra Environmental Systems (Nordby) report asserts that tidal action is limited to the area west of the bridge, however, the Commission biologist’s review of that report states that the work presents a “snapshot” characterization, based on short-term observations of cyclically variable systems. The review indicates that the conclusions in this short-term study are wrong and even contradict the author’s own previous work.

The Commission’s senior coastal engineer has reviewed monitoring data collected during 2002 and also concluded that tidal action extends at least as far east as the Interstate 5 bridge. Data collected at the Interstate 5 bridge by the San Elijo Lagoon Conservancy demonstrate the presence of brackish water and diurnal fluctuations in water and salinity levels. These factors are all indicative of tidal action. (See Exhibit 9).

Staff’s conclusion regarding the location of the First Public Road Paralleling the Sea in this part of the City has three components: (1) that San Elijo Lagoon is an estuary that is subject to tidal action, and the “Sea” for purposes of the Coastal Act (see P.R.C. Section 30115), (2) that tidal action in San Elijo Lagoon extends inland of the I-5 highway bridge, and (3) that Manchester Ave., Rancho Santa Fe Rd., La Bajada, and La Noria meet the criteria for designation as the First Public Road Paralleling the Sea, specifically the requirement that the designated road(s) must “generally parallel and follow the shoreline of the Sea so as to include all portions of the Sea where the physical features such as bays, lagoons, estuaries and wetlands cause the waters of the Sea to extend landward of the generally continuous coastline.”

III. First Public Road Description

The series of roadways and streets included below and shown as a component of the Commission's appeal jurisdiction boundary on the attached Exhibit 3, constitute the current route of the "First Public Road Paralleling the Sea," for purposes of Public Resources Code (P.R.C.) Sections 30600.5, 30601, 30603, 30115, and all other applicable provisions of the Coastal Act of 1976. This system of coastal roadways and streets is consistent with, and meets the criteria set forth in 14 C.C.R. Section 13577, in particular 13577(i).

From the northern City boundary the route designated as the First Public Road paralleling the Sea (FPR) in the City of Encinitas follows 1st Street south to Grandview Street, west on Grandview Street to Neptune Avenue, South on Neptune Avenue to Sylvia Street, East on Sylvia Street to 4th Street, south on 4th Street to B Street, east on B Street to 3rd Street, south on 3rd Street to C Street, west on C Street to 4th Street, south on 4th Street to McNeill Avenue, east on McNeill Avenue to 3rd Street, south on 3rd Street to F Street, west on F Street to 4th Street, South on 4th Street to H Street, east on H Street to 3rd Street, south on 3rd Street to K street, east on K Street to 1st Street, and south on 1st Street to Chesterfield Dr., east on Chesterfield Dr. to San Elijo Ave., South on San Elijo Ave. to Manchester Ave., east on Manchester Ave. to Rancho Santa Fe Rd., southeast on Rancho Santa Fe Rd. to La Bajada, southeast on La Bajada to La Noria, southwest on La Noria to El Camino Real, and south on El Camino Real to the southern city boundary.

IV. Additional Responses to Comments Submitted At July 9, 2002 Hearing

One commenter argues that the earlier version of the draft post-LCP certification map was "deemed certified" by the Commission's action certifying the Encinitas LCP. This is incorrect. There is no provision in the Coastal Act, the Commission's regulations, or case law that provides for a post-LCP certification map to be adopted by being "deemed" certified. The Commission must conduct a public hearing prior to adopting a post-LCP certification map. 14 C.C.R. § 13576(a). In any event, when the City of Encinitas presented the LCP package to be certified by the Commission, it contained no maps designating the Commission's original or appeal jurisdiction, as would a post-LCP certification map. Thus, the Encinitas LCP did not contain a post-LCP certification map that could be deemed certified.

Some of the commenters also argue that the Commission may only adopt the post-LCP certification map as proposed by Commission staff if the Commission identifies "changed conditions" that occurred between the time Commission staff prepared the earliest drafts of the post-LCP certification map and the most recent draft. Although the Commission's regulations do refer to changed circumstances as being a basis for changing an already adopted post-LCP certification map (14 C.C.R. § 13576(a)), the earlier draft map that depicted Highway 101 as the First Public Road was never adopted by the Commission. Consequently, the Commission has no occasion or need to find that changed circumstances justify changes between different generations of the draft map. It is sufficient for the Commission to find that the currently

proposed post-LCP certification map accurately depicts the First Public Road as referenced in Coastal Act Section 30603(a)(1) and defined in 14 C.C.R. § 13577(i).

One commenter asserts that Commission staff did not consult with the City of Encinitas regarding the post-LCP certification map. This is incorrect. Commission staff met in person with staff from the City Manager's office, the City Attorney's office, and the planning department to discuss the map in detail. Commission staff also had numerous telephone conversations with City of Encinitas staff regarding the post-LCP certification map. As indicated in the City's letter to the Commission dated January 11, 2002, Commission staff incorporated the City's suggestions when preparing the proposed post-LCP certification map.

The commenters argue that tidal action does not extend as far east as the Interstate 5 bridge. The Commission's senior coastal engineer has prepared a memorandum addressing the issue of tidal action in San Elijo lagoon and concurs with mapping staff that San Elijo Lagoon is subject to tidal action (See Exhibit 9). The memorandum evaluates both the data submitted by the commenters and more recent and complete data submitted by the San Elijo Lagoon Foundation. It concludes that the presence of brackish water and the existence of diurnal fluctuations in water and salinity levels are all indicative of tidal action at the Interstate 5 bridge. This memorandum supplements the earlier staff analysis and evaluation done by the Commission's staff biologist and supports the conclusion that tidal action extends east of Interstate 5.

The commenters argue that the earlier version of the draft post-LCP certification that depicts Highway 101 as the first public road across the lagoon should apply. Information supplied by the commenters' own consulting firm, however, unequivocally demonstrates that tidal action extends eastward of the Highway 101 bridge. See, e.g., Tierra Environmental Services, Inc., San Elijo Lagoon Tidal Action Study: Eastern Limit of Tidal Action in San Elijo Lagoon, Synthesis Report (July 8, 2002), at pages 3, 8-10, tables 4, 5, 6, figures 7, 8, 9. The Highway 101 bridge, therefore, would not be the appropriate road to designate as the First Public Road at San Elijo Lagoon even on the basis of the commenters' information.

Another commenter characterizes the findings of the trial court in ongoing litigation between Encinitas Country Day School, Inc. and the Coastal Commission. The Commission disagrees with the trial court's findings and has appealed those rulings. Even if there were a final judgment in that action adverse to the Commission, it would not bind the Commission's action with regard to adoption of the post-LCP certification map. At issue in the Encinitas Country Day School is whether the Commission properly asserted appellate jurisdiction over a development proposed by Encinitas Country Day School. The lawsuit does not address whether the record currently before the Commission supports the depiction of the First Public Road on the proposed post-LCP certification map.

A commenter misinterprets the note that appears on the proposed post-LCP certification map regarding parcels that are bisected by the appeals jurisdiction boundary. The Commission only has appellate jurisdiction over local government actions regarding development that falls within one or more of the categories specified in Coastal Act Section 30603(a), most of which are

defined by reference to geographic features. If a proposed development straddles the appeals jurisdiction boundary, the appeal must allege that some attribute of the portion of the proposed development that is located within the Commission's geographically defined appeals jurisdiction is inconsistent with the certified LCP or the public access policies of the Coastal Act. If the Commission finds that an appeal raises a substantial issue regarding the portion of the development located within the appeals area, then the Commission reviews the "action" taken by the local government, i.e., the issuance of a CDP. The Commission does not limit its review at the de novo stage to only the aspects of the CDP that address the portion of the proposed development that is physically located in the appeals area. It reviews and, if appropriate, issues a permit for the entire development originally authorized by the local CDP.

NOTE

In some areas a parcel is bisected by the appeal jurisdiction boundary. All development proposed within the appeal area defined as appealable is subject to the Commission's jurisdiction. In addition, if a development is proposed partly on the portion of the parcel that forms the basis for geographic appeal jurisdiction, and partly on the remainder of the parcel, and the Commission decides to hear the appeal, then the Commission reviews the action of the local government (Section 30603(a)), which encompasses all the development that was authorized in the permit.

Due to the cost of reproduction, a full-size copy of map Exhibit 3, normally mailed to Coastal Commissioners and other interested persons, has not been included with the staff report. A reduced version of Exhibit 3 has been attached in its place, and copies of the full-size 1:15,000 scale map are available for review at the City of Encinitas, and at Coastal Commission offices in San Francisco and San Diego. Full size maps will also be available for review at the Commission meeting in Los Angeles.

Post-LCP Certification
Permit and Appeal Jurisdiction
City of Encinitas

Coastal Zone Boundary

City Boundary

Permit Jurisdiction

This area includes only lands below the mean high tide line and lands where the public trust may exist.

Appeal Jurisdiction

This area includes lands between the sea and the designated first public road paralleling the sea or 300' from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of any coastal bluff.

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit and appeal jurisdiction pursuant to P.R.C. Sec. 30519(b), and Sec. 30603(a)(1) and (a)(2). In addition, developments may also be appealable pursuant to P.R.C. Sec. 30603(a)(3), (a)(4) and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plot may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.

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California Coastal Commission
Technical Services Unit

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Note

In addition to these geographic areas of appeal jurisdiction the following types of development are appealable throughout the coastal zone pursuant to PRC Section 30603 (a)(4) and (a)(5):

1. Any development approved by a county that is not designated as a principal permitted use under zoning approved pursuant to the applicable Local Coastal Program;
2. Any development that constitutes a major public works project or a major energy facility.

In some areas parcels are bisected by the appeal jurisdiction boundary. All development proposed within the appeal area defined as appealable is subject to the Commission's jurisdiction. In addition, if a development is proposed partly on the portion of the parcel that forms the basis for geographic appeal jurisdiction, and partly on the remainder of the parcel, and the Commission decides to hear the appeal, then the Commission reviews the action of the local government (section 30603(a)), which encompasses all the development that was authorized in the permit.

I hereby certify that this map portrays the boundaries for

(jurisdiction and geographic location)

adopted by the California Coastal Commission

(date)

Name

Title

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On this _____ day of _____, in the year _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the authorized representative of the California Coastal Commission and the person whose name is subscribed to this instrument and acknowledged that _____ executed it.
IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public

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Exhibit 3